95-1578

Supreme Court, U.S.
FILED
MAR 18 1996
CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

JACK DAVID KELLY,
"PRO SE,"

Petitioner,

versus

ALBERT PENSON, in his individual capacity
and as a partner in the Law Firm of
HILTON, HILTON, KOLK AND PENSON, P.A.,

Respondents.

Petition For Writ Of Certiorari
To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

JACK DAVID KELLY, Pro SE
3331 Summit Blvd., #87
Pensacola, FL 32503
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Petitioner

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14 pp

QUESTIONS PRESENTED FOR REVIEW

Whether the lower courts declared invalid the provisions of the state of Florida's Constitution.

Article 1, Section 21 – "The courts shall be open to every person for redress of injury and justice shall be administered without sale, denial or delay."

Based on the question above was the provisions of the state of Florida's Constitution recognized and carried out insuring the right of the petitioner to a fair impartial unbiased trial in compliance with the Florida Constitution's rights and in compliance with the rights of the Florida Statutes, and in compliance with the provision of:

Principle 255 from the Fourteenth Amendment which provides "No state shall deny to any person who lives within its jurisdiction the equal protection of the laws."

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JURISDICTION

The date of the judgment or order sought to be reviewed was entered December 20, 1995.

Pursuant to 28 U.S.C. and Rule 10.1 – The Supreme Court of the United States has discretionary power to review final orders of a state's highest court of last resort.

Market Street R. Co. v. Railroad Commission, 324 U.S. 548, 551 (1945).

This court has held that to be reviewable, the state court judgment "must be final," it must be the final word of the final court.

This Petition for Writ of Certiorari is timely filed and therefore this court does have jurisdiction pursuant to Rule 13 of the Rules of the United States Supreme Court.

Jurisdiction is established by the provision of the Florida Constitution, Article 1, Section 21 – "The courts shall be open to every person for redress of injury and justice shall be administered without sale, denial or delay."

Principle 255 from the Fourteenth Amendment which provides "No state shall deny to any person who lives within its jurisdiction the equal protection of the laws."

The right to a fair impartial unbiased trial in compliance with the Florida Constitution's rights, in compliance with the provisions and rights of the Florida Statutes and in compliance with the provisions of the Constitution of the United States of America.

STATEMENT OF THE CASE

The contract between Jack David Kelly and Albert Penson in his individual capacity and as a partner in the Law Firm of Hilton, Hilton, Kolk and Penson, P.A. was and is a binding contract as a matter of law and equity and not subject to repudiation by either party until or unless the performance of condition failed.

Such failure of this charged statement's terms, time, conditions and covenants occurred later in time from the date of the contract. The failure of these charged terms, time, conditions and covenant of the said contract invalidated the contract agreement of March 27, 1990.

REASONS FOR GRANTING THE WRIT

Whether the lower courts declared invalid the provisions of the state of Florida's Constitution.

Article 1, Section 21 – "The courts shall be open to every person for redress of injury and justice shall be administered without sale, denial or delay."

Based on the question above was the provisions of the state of Florida's Constitution recognized and carried out insuring the right of the petitioner to a fair impartial unbiased trial in compliance with the Florida Constitution's rights and in compliance with the rights of the Florida Statutes, and in compliance with the provisions of:

Principle 255 from the Fourteenth Amendment which provides "No state shall deny to any person who lives within its jurisdiction the equal protection of the laws."

Obstruction of justice is applicable in this instant case tolling the statute of limitations.

Concealment of the truth is a violation of a rule of equity as well as the law where either the suppression of the factual truth *or the suggestion of what is false can be proved in a fact material to the contract, the party injured may have relief against the contract.* Suppression of the truth is an expression of what is false; and therefore, obstruction of justice and the act by which one or more persons attempt to prevent, or do prevent the execution of lawful process, which is a specific illegal act of the instant case.

Toledo Newspaper Co. v. U.S., 247 U.S. 402, 38 S. Ct. 560, 564, 62 L.Ed. 1186.

18 U.S.C.A. § 1501.

Model Penal Code § 242.1.

1. *Violation of the Terms of the Contract* – "If we are only to pursue the declaratory judgment action or similar actions to invalidate the merger and to have the title to the property effectively identified, I estimate that our fees would range from $5,000 to $8,000 assuming we encountered slight to moderate opposition. Of course, the stronger the opposition the more likely your fees will exceed the range identified above." Paragraph III of Exhibit identified as Exhibit "A" hereto attached and made a part hereof.

Deliberate delay of one year and eight months constituting obstruction of justice, legal malpractice and breach of contract of any reasonable performance of said contract to hinder and delay by dishonesty and moral wrong of performance of said agreement of March 27, 1990, of

case now known as No. 95-882 in the Supreme Court of the United States, October Term 1995.

2. *Violation of Time Requirement of the Contract* – "Pursuant to our discussion today, we are willing to proceed with this matter, as outlined above, upon an initial deposit of $1,000 and the remainder of the retainer ($4,000) to be deposited on or before April 20, 1990. If you would like us to proceed, please execute this letter in the space provided and return it to my office at your earliest convenience." (This statement is contained in paragraph V of Exhibit "A".)

As said above in Item 1 the first hearing was only a hearing on venue which was prolonged until one year and eight months which was an act of deliberate delay, consisting of obstruction of justice from date of contract, provision starting upon signing of March 27, 1990.

3. *Contract Violation of Promise* – A covenant to proceed thereby violating the plaintiff's constitutional right of Article 1, Section 21 – "The courts shall be open to every person for redress of injury and justice shall be administered without sale, denial or delay."

Therefore the performance of the condition of the contract to proceed at the signing and initial deposit of $1,000 and the remainder of the retainer ($4,000) to be deposited on or before April 10, 1990, did not happen until one year and eight months later.

Supported by documentary proof of obstruction of justice and violation of the provision of Article 1, Section 21.

In addition, deliberate obstruction of justice, necessary before and after the fact, stifling, suppressing, controlling, relevant, material facts, concealment of a felony cognizable by a court of the United States and does not make known the same to some judge or other person in civil authority under the United States.

Samuel Goldwyn, Inc. v. United Artists Corp., 113 F.2d 703, 707 (C.C.A.).

18 U.S.C. § 4.

U.S. v. Ciambrone, 750 P.2d 1416, 1417 (C.A. Nev.).

The defendant Albert Penson had full knowledge that the evidence of controlling, relevant material facts was called for in an interrelated case of which he was counselor and this cause of action was a breach of contract and legal malpractice.

United States v. Perlstein, 126 F.2d 799.

Commonwealth v. Russo, 177 Pa. Super. 470, 111 A.2d 359.

18 U.S.C.A. § 1506, 1512.

United States v. Perlstein, 126 F.2d 789, 798 (C.C.A. N.J.).

CONCLUSION

Wherefore the petitioner, a citizen of the United States of America asks this, the Supreme Court of the United States, to exercise its supervisory powers and reverse the judgment of the lower courts and remand to

trial for further proceeding to declare the sense of the law and not judgment.

Article III Jurisdiction of the Federal Court, Principle 168 from Article III.2.1.

It involves the petitioner, a citizen's fundamental rights of the Constitution of the State of Florida and the Constitution of the United States of America of law and equity and the contract's right of law and equity. Therefore, the judgments of the lower courts of Florida were without authority, color of law, biased and certainly prejudicial.

The Florida state court of last resort has departed from the accepted uniform constitutional rights of judicial proceeding and sanctioned such departure by the lower courts of Florida, wherefore this Writ of Certiorari should be allowed, the judgments should be reversed and all interrelated relevant cases listed below consolidated and remanded for trial with this court of the United States exercising its supervisory and jurisdictional powers for the constitutional rights of the state of Florida, and the United States of America, the Florida Statutes and the rights of truth.

Interrelated Cases to this instant case:

No. 79-1862-CA-01, Div. "E", Pensacola Loan and Savings, a Florida Industrial and Savings Bank vs. Williams, Emory O., ET UX, ET AL. vs. Tree Farm Development Corporation.

No. 95-882, Maple Leaf Development Corporation, Jack David Kelly, Individually as a person with Equity and Legal Title as the Original Sole Owner of Maple Leaf

Development Corporation and as its President and Chairman, Pro Se vs. Tree Farm Development Corporation; Emory O. Williams, Jr.; The Estate of George G. Phillips, Jr.; E.D. Bob Pierce; and the Estate of Abraham L. Pierce and all cases consolidated therein.

Sincerely,

/s/ Jack David Kelly

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Exhibit "A"

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701 E. Tennessee Street
At Franklin Blvd.
Tallahassee, FL 32308
Tel. (904)561-8000
FAX (904)561-8030

March 27, 1990

Mr. Jack David Kelly
3331 Summit Boulevard
Jamestown Apartments #87
Pensacola, Florida 32503

Dear Mr. Kelly:

I. This letter follows our meeting earlier today. I appreciate the opportunity to meet with you and discuss your potential cause of action. The documents you provided appear to demonstrate that you have a sufficient factual basis upon which to proceed. Before filing any actions with the court, we would have to investigate the matter further and would have to examine the time frames in which these matters occurred to make sure that you are able to bring an action in 1990 for matters that arose between 1971 and 1980.

II. As we discussed, our fee for handling this matter would be based on an hourly rate of $125 per hour plus costs. The costs would include such items as filing fees, service of process fees, court reporter fees, photocopies, postage, long distance charges and any other expenses related to the handling of this matter.

III. If we are only to pursue the declaratory judgment action or similar actions to invalidate the merger and to have the title to the property effectively identified, I estimate that our fees would range from $5,000 to $8,000 assuming we encountered slight to moderate opposition. Of course, the stronger the opposition the more likely your fees will exceed the range identified above.

IV. If you would like this firm to represent you, then we will need you to deposit $5,000 to be held in trust, which we will bill against at the stated hourly rate. You will receive a bill every month showing the fees and costs incurred and the balance remaining in trust. If we exceed the $5,000 amount, then we would expect you to pay each month's costs and expenses as they are incurred.

V. Pursuant to our discussion today, we are willing to proceed with this matter, as outlined above, upon an initial deposit of $1,000 and the remainder of the retainer ($4,000) to be deposited on or before April 20, 1990. If you would like us to proceed, please execute this letter in the space provided and return it to my office at your earliest convenience.

I look forward to working with you if you so desire.

Sincerely,

/s/ Albert C. Penson
Albert C. Penson
Hilton, Hilton, Kolk & Penson

ACP/sfe

I HEREBY ACKNOWLEDGE and accept the fee arrangement outlined in this letter.

Date: 3/27/90 /s/ Jack David Kelly
Jack David Kelly